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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EDWARD E. SEELY,

Plaintiff,

vs.

JIM GIBBONS et al.,

Defendants.

^{cv}
3:08-~~07~~-00125-RCJ-RAM

ORDER

Plaintiff Edward E. Seely has sued several Defendants for constitutional violations arising out of his incarceration at the Northern Nevada Correctional Center. Plaintiff's remaining claims include: (1) an Eighth Amendment conditions-of-confinement claim; (2) an Eighth Amendment deliberate-indifference claim; (3) a Fourteenth Amendment procedural due process claim; (4) a Fourteenth Amendment equal protection claim; and (5) Americans with Disabilities Act ("ADA") and Rehabilitation Act ("RA") claims.

Pending before the Court are two Reports and Recommendation ("R&R") on three motions. The first R&R, (*see* R&R, Feb. 2, 2011, ECF No. 271), concerns Defendants' Motion to Seal (ECF No. 221) and Motion for Summary Judgment (ECF No. 222). The Court adopts the R&R in part and grants both motions in full. Although the Magistrate Judge's elucidation of the general standards applicable to the case are correct, the Court respectfully disagrees with some

1 of the conclusions in the R&R and therefore adopts it only in part.

2 As to the conditions-of-confinement claim, Plaintiff was not denied minimally sanitary
3 conditions. He was denied a particular method of showering (a wall-mounted shower bench).
4 The provision of allegedly unstable shower stools as an alternative to showering directly in a
5 wheelchair does not violate the Eighth Amendment. Plaintiff does not allege that he was forced
6 to use the chairs or that he was harmed from any resulting fall. The risk from such a fall was only
7 prospective, because Plaintiff admits he had the option to shower in his chair rather than attempt
8 a transfer to the stool. Defendants are entitled to summary judgment on the conditions-of-
9 confinement claim.

10 Defendants are also entitled to summary judgment on the deliberate indifference claim.
11 As the Magistrate Judge notes, there is no evidence apart from Plaintiff's deposition testimony
12 that he suffered from bed sores, that any bed sores were a result of showering in a wheelchair, or
13 that Plaintiff ever complained to anyone about bed sores.

14 Finally, Defendants are entitled to summary judgment on the ADA/RA claim. Plaintiff
15 does not allege he was denied the ability to shower based on his disability. He alleges only that
16 it is easier for him to shower with a wall-mounted bench. But even assuming an ADA claim had
17 been viable at some point, as the Magistrate Judge notes, the only available measure of relief
18 remaining on this claim is an injunction. This measure of relief has become moot due to the
19 admitted installation of the desired facilities in unit three by the time Plaintiff was transferred
20 back to that unit on November 4, 2008. (See Seely Dep. 56, July 21, 2010, ECF No. 222-2, at
21 12).

22 The court adopts the second R&R, (see R&R, Feb. 10, 2011, ECF No. 273), denying
23 Plaintiff's Motion for Preliminary Injunction (ECF No. 239) as moot.

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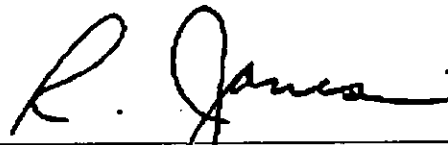
CONCLUSION

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 271) is ADOPTED in part and REJECTED in part, and the Motion for Summary Judgment (ECF No. 222) is GRANTED.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 273) is ADOPTED, and the motion for Preliminary Injunction (ECF No. 239) is DENIED.

IT IS SO ORDERED.

Dated this 21st day of March, 2011.



ROBERT C. JONES
United States District Judge